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108TH CONGRESS *2d Session*	SENATE	REPORT 108–253

BROADCAST DECENCY ENFORCEMENT ACT OF 2004

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2056

APRIL 5, 2004.—Ordered to be printed

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2056]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2056) "A Bill To increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane language," having considered the same, reports favorably thereon with amendments, and an amendment to the title, and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The objective of this legislation is to increase and strengthen the enforcement mechanisms available to the Federal Communications Commission (FCC or Commission) to combat the broadcasting of indecent, obscene, and profane material over the airwaves. The legislation is also intended to assess the effectiveness of technological tools designed to block violent programming, and if necessary, prohibit the distribution of violent programming during hours when children are likely to comprise a substantial portion of the audience.

BACKGROUND AND NEEDS

Since the inception of the Commission, Congress has been concerned with indecent and obscene material broadcast over the airwaves. Both the Radio Act of 1927 and The Communications Act of 1934 (the Act) vested the agency with the authority to regulate obscene, indecent, and profane material. In 1948, Congress codified section 1464 in the criminal code, which states, "Whoever utters any obscene, indecent, or profane language by means of radio com-

munication shall be fined under this title or imprisoned not more than two years, or both."

The FCC is charged with enforcing section 1464 and has promulgated rules prohibiting radio and television stations from broadcasting indecent material between 6 a.m. and 10 p.m. For those who violate the rules, the FCC may issue warnings, impose monetary fines (up to $27,500 for each violation or up to $275,000 for a continuing violation for a broadcast station licensees and $11,000 for non-licensees who have received a prior warning, *i.e.* performers), or revoke licenses for the airing of indecent material.

The increase in the number of indecency complaints filed at the Commission demonstrates the public's concern over the recent surge in indecent content on radio and television. The number of complaints increased from 111 in 2000 to 2,240,350 in 2003. The number of complaints filed in 2004 is on pace to exceed the number filed in 2003.

A study conducted by the Parents Television Council (PTC), and published in its report titled, "The Blue Tube: Foul Language on Prime Time Network TV," concluded that "foul language during the Family Hour [8 p.m. to 9 p.m.] increased by 94.8 percent between 1998 and 2002." The pervasiveness of indecent material has fueled competition among broadcasters to push the envelope for more and more questionable content. As described in the PTC report: "Once the initial taboo is broken and the shock value wears off, more and more curse words fall into the category of 'acceptable' language, and TV must try to up the ante by introducing new words to prime time TV's obscene lexicon."

Due to the increase in complaints, the Commission has indicated recently a willingness to toughen its enforcement against the broadcasting of indecent and obscene material. However, besides a paltry 10 percent increase for inflation, these statutory limits on fines have not been increased since 1991. As a result, the current statutory limits on fines, even if they are enforced more rigorously, appear to be a mere cost of doing business rather than a deterrent to broadcasting obscene, indecent, or profane material. S. 2056 was introduced to enhance the FCC's enforcement capability by increasing these fines.

While the FCC has rules, although deficient, governing the broadcasting of indecent programming, it has not adopted similar regulations to protect children from exposure to violent programming on television. The Telecommunications Act of 1996 (1996 Act) included a provision requiring all television sets manufactured after January 1, 2000, to contain a "V-Chip," a feature that provides parents with the ability to block the display of certain programming based on a program's rating. An April 2000 survey conducted by the Kaiser Family Foundation, found that only 9 percent of parents of children ages 2-17 had a television with a V-Chip, only 3 percent of all parents had ever used the V-Chip to block programming, and 39 percent of parents surveyed had never heard of the V- Chip.

The American Psychological Association (APA) reports that by the time a child who watches 2 to 4 hours of television daily leaves elementary school, he or she will witness at least 8,000 murders and more than 100,000 other assorted acts of violence on television. Psychological research has also shown that children who watch vio-

lence on television may become less sensitive to the pain and suffering of others, may be more fearful of the world around them, and may be more likely to behave in aggressive or harmful ways toward others.

I. INDECENT PROGRAMMING ON RADIO AND TELEVISION

A. INDECENCY REGULATION

The FCC defines "indecent speech" as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." In applying the "community standards" criterion, the FCC has stated, "the determination as to whether certain programming is patently offensive is not a local one and does not encompass any particular geographic area. Rather, the standard is that of an average broadcast viewer or listener and not the sensibilities of any individual complainant." [1] Additionally, to be found indecent the material must be broadcast at a time of day when children are likely to be in the audience—between the hours of 6 a.m. and 10 p.m.[2]

The Supreme Court decision establishing the judicial foundation for the FCC's indecency enforcement authority, is *FCC* v. *Pacifica Foundation,* 438 U.S. 726 (1978). In *Pacifica*, the Supreme Court upheld an FCC ruling finding indecent, but not obscene, a twelve-minute routine by comedian George Carlin. Upholding the FCC's actions, the Supreme Court emphasized the fact that the broadcast media pervades society and that once unexpected program content is heard, the damage is done: "To say that one may avoid further offense by turning off the radio when he hears indecent language is like saying that the remedy for an assault is to run away after the first blow." Additionally, the Court noted that "broadcasting is uniquely accessible to children, even those too young to read," and that the government's interest in the well-being of its youth and in supporting parental control in the household justified regulation. As a result, the Court found that under these circumstances, the FCC could sanction those who broadcast indecent—even if not obscene—language.

B. COMMISSION ENFORCEMENT ACTION

Some critics argue that the current process is largely ineffective and puts too many burdens on complainants. In particular, these critics note that in 2003 the FCC received about 240,000 complaints concerning approximately 375 radio and television programs, and issued a total of 3 fines. The indecency complaint process also has been criticized for allowing complaints to languish, which has in some cases resulted in the FCC being forced to dismiss a complaint because the statute of limitations has run. Since 2000, the number of indecency complaints has risen to a record high.

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[1] Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. 1464 and Enforcement Policies Regarding Broadcast Indecency, *Policy Statement*, 16 FCC Rcd 7999 (2001).

[2] *Action for Children's Television v. FCC*, 58 F.3d 654, (D.C. Cir. 1995), herein after *ACT IV*.

Year	No. of complaints received	No. of programs reflected in such complaints	No. of complaints denied or dismissed by year-end	No. of complaints pending at year-end
2004	530,885	23	.....	.....
2003	2,240,350	318	368	239,982
2002	13,922	345	13,258	664
2001	346	152	242	104
2000	111	101	37	72

Until 2003, the highest indecency fine the FCC had imposed was $35,000 to WQAM (Miami, FL) for a five-day indecent broadcast. In 1995, the FCC issued Notices of Apparent Liability (NAL) of $400,000, $500,000, and $600,000 against Infinity Broadcasting Corporation, (Infinity, a unit of Viacom, Inc.) involving "The Howard Stern Show," but the forfeitures were never actually recorded because the company entered into a settlement agreement instead for more than $1.7 million.

Recently, the Commission has imposed the statutory maximum fine of $27,500 in numerous instances.

- In April 2003, the FCC proposed the statutory maximum fine of $27,500 against Infinity for the broadcast of explicit and graphic sexual references, including references to anal and oral sex, as well as explicit and graphic references to sexual practices that involve excretory activities. In addition, the FCC stated that given the egregiousness of this violation, additional serious violations by Infinity might lead to the initiation of a license revocation proceeding. While Infinity challenged the proposed fine, the FCC rejected this challenge and issued a forfeiture order on December 8, 2003.
- In October 2003, Infinity was fined $357,500 for airing a description of a couple allegedly having sex in St. Patrick's Cathedral in New York City. The broadcast was part of a contest among five couples who were challenged by station personnel to have sex in several places specified by the station, including St. Patrick's Cathedral. The FCC said the forfeiture was the largest amount permitted by the Act based on the legal facts of the case, and therefore fined the thirteen Infinity stations that aired the program $27,500 each.
- In October 2003, the FCC issued a $55,000 forfeiture against AM/FM Radio Licensees, which is controlled by Clear Channel Communications, Inc. (Clear Channel), for airing a program in which the hosts questioned two high school girls about the sex lives of students and school administrators.
- In January 2004, the FCC issued its largest forfeiture ever for $755,000 against Clear Channel for airing indecent material in connection with the "Bubba the Love Sponge" program. The forfeiture assessed the statutory maximum of $27,500 to each of the 26 Clear Channel stations that aired the indecent material, and the base amount of $10,000 each for four public file violations ($40,000).
- During the 2004 Super Bowl, Janet Jackson's breast was exposed during her halftime duet with Justin Timberlake. Viacom's CBS television network, which aired the show, and Viacom's MTV, which produced the halftime show, apologized for what they describe as an "unscripted moment." CBS esti-

> mates that some 140 million Americans tuned into the game, which would make it the most-watched Super Bowl in history. FCC Chairman Michael C. Powell issued a statement the following morning, calling the incident a "classless, crass and deplorable stunt" and instructed the Commission to open an immediate investigation on its own motion. The FCC has received more than 500,000 complaints about the Super Bowl halftime show. Chairman Powell's probe could result in fines against CBS's 20 owned and operated stations and the more than 200 affiliate stations that aired the broadcast. If the Commission levies the maximum $27,500 fine, CBS affiliates would have to pay $5.5 million, about the cost of two Super Bowl ads, while CBS, through its owned stations, would be fined approximately $550,000.

Even with the FCC's recent actions on indecency, many critics have suggested that the fines are merely the "cost of doing business" for these large companies. Commissioner Michael J. Copps has declared in a recent statement:

> . . . a mere $27,500 fine for each incident . . . such a fine will be easily absorbed as a "cost of doing business" and fails to send a message that the Commission is serious about enforcing the nation's indecency laws. "Cost of doing business" fines are never going to stop the media's slide to the bottom.[3]

The following chart compares the Commission's current fines to the various companies' revenues.

Station owner	2002: Amount of fines (number of fines)	Company revenue for 2002	2003: Amount of fines (number of fines)	Company revenues for 2003
Clear Channel	$0	$8,093,000,000	$1,057,500	$8,042,000,000
Infinity	21,000	24,600,000,000	412,500	26,600,000,000
Entercom	14,000	391,300,000	0	401,100,000
Emmis	28,000	533,800,000	0	N/A

While the FCC has moved to assess the maximum fine in certain cases, the Commission has not utilized its authority to issue fines for violations on a per utterance basis, to initiate license revocations, or to further develop a consistent and aggressive approach to combating indecency. In October, the FCC's Enforcement Bureau determined that rock star Bono's use of the "F" word on a live national broadcast was not indecent because it did not appeal to the "prurient interest" since the term was used as an adjective. Shortly thereafter, the House of Representatives and Senate both passed forth resolutions expressing a sense that there is no support for, "the lowering of standards or weakening of rules by the FCC prohibiting obscene and indecent broadcasts to allow network or other communications to use language that is indecent or vulgar" and requested that the FCC Commissioners reverse the Enforcement Bureau's decision.[4] On March, 3, 2004, the FCC reversed the Enforce-

[3] Notice of Apparent Liability for Forfeiture Clear Channel Broadcasting Licenses, Inc., Separate Statement of Commissioner Michael J. Copps, Dissenting, 19 FCC Rcd 1768, (rel. Jan. 27, 2004).

[4] See H. Res. 482 and H. Res. 500, and S. Res. 283 (2003).

ment Bureau's decision stating that any use of the "F" word violates the FCC's indecency rules.[5]

C. POSSIBLE RELATIONSHIP TO MEDIA OWNERSHIP

The number of indecency complaints has risen during a period when the number of owners of media outlets has decreased. As a result, the Committee has become concerned that there may be a possible connection between the increased consolidation of owners in the media industry and the increased number of complaints on indecent programming. For example, Clear Channel, which was assessed the largest fine ever issued by the FCC, went from owning 512 stations in 1999 to over 1,200 stations in 2004. Other radio station group owners also have increased their ownership holdings over the same period. Infinity went from owning 163 stations in 1999 to owning 180 in 2004; Citadel went from 108 stations in 1999 to 213 stations in 2004; Cummlus Media, Inc. went from owning 232 in 1999 to 301 in 2004; and Entercom Communications Corporation went from owning 42 in 1999 to 104 in 2004.

Consumers Union and PTC have testified before the Committee on the relationship between increased media consolidation and a coarsening of content on the airwaves. Gene Kimmelman of Consumers Union wrote to the Committee in a letter dated March 8, 2004, "Realistic media ownership rules must be in place to lessen the influence of massive corporations on local broadcast content, as well as to ensure public debate in the local media, including newspapers."[6] At a July 23, 2003, hearing, Brent Bozell of PTC testified, "There are many reasons not to give these six mega-corporations even more control of our airwaves, one of them being their utter lack of attentiveness to community standards."

II. VIOLENT PROGRAMMING ON TELEVISION

A. IMPACT OF MEDIA VIOLENCE ON CHILDREN

The impact of media violence on children has been studied since motion pictures were created during the 1920s. The primary concern at that time was whether certain scenes containing sexual or violent content undermined moral standards. A few years later, a study suggested that there was a link between delinquency-prone youngsters and motion pictures. Although members of the broadcast industry and specialists in human deviant behavior criticized these conclusions, it elevated the issue to one of public importance.

As television grew in the 1950s, it became the primary focus of media violence researchers. Between the late 1950s and early 1960s, several studies suggested a strong link between television violence and youth aggression. In 1969, the Surgeon General was petitioned by Senator John Pastore, the Chairman of the Senate Committee on Commerce, to conduct a study on television and social behavior. The study, published in 1972, found that: (1) television content is heavily saturated with violence; (2) children and adults are watching more television; and (3) there is some evidence that, on balance, viewing violent television entertainment increases the likelihood of aggressive behavior.

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[5] Complaints of various broadcast licensee r.e. airing of "Golden Globe Awards" Program, Memorandum Opinion and Order, FCC 04-43.

[6] *See* www.consumerunion.org/pub/core—telecom—and—utilities/000901.html

The Surgeon General's report heightened concern over the issue and led to more studies, including a study released in 1975 by the Journal of American Medical Association (JAMA). The study suggested that television violence was having a deforming effect on children, resulting in abnormal child development, and increasing levels of physical aggressiveness. In response, the America Medical Association (AMA) passed a resolution declaring that television violence threatened the welfare of young Americans.

Since the release of the Surgeon General's report and the JAMA study, a number of major medical and public health organizations have studied and affirmed the link between violent programming and violent behavior in children. In 1982, the National Institute of Mental Health (NIMH) produced a report entitled "Television and Behavior: Ten Years of Scientific Progress and Implications for the Eighties," concluding that TV violence affects all children, not just those predisposed to aggression. Specifically, the report reaffirmed the conclusions of earlier studies:

> After 10 more years of research, the consensus among most of the research community is that violence on television does lead to aggressive behavior by children and teenagers who watch the programs. This conclusion is based on laboratory experiments and on field studies. Not all children become aggressive, of course, but the correlations between violence and aggression are positive. In magnitude, television violence is as strongly correlated with aggressive behavior as any other behavioral variable that has been measured. The research question has moved from asking whether or not there is an effect to seeking explanations for the effect.[7]

In 1992, Dr. Brandon Centerwall, a Professor of Epidemiology at the University of Washington, conducted a study on the homicide rates in South Africa, Canada, and the United States in relation to the introduction of television. In all three countries, Dr. Centerwall found that the homicide rate doubled about 10 or 15 years after the introduction of television. According to Dr. Centerwall, the lag time in each country reflects the fact that television exerts its behavior-modifying effects primarily on children, whereas violent activity is primarily an adult activity. Dr. Centerwall concludes that "long-term childhood exposure to television is a causal factor behind approximately one-half of the homicides committed in the United States." This report found that extensive exposure to television violence could lead to chronic effects extending into later adolescence and adulthood.

In June 2000, representatives from 6 of the nation's top public health organizations, including the Academy of Pediatrics, the APA, and the AMA, issued a joint statement noting that:

> Well over 1,000 studies—including reports from the Surgeon General's office, the National Institute of Mental Health, and numerous studies conducted by leading figures within our medical and public health organizations—our own members—point overwhelmingly to a causal con-

[7] National Institute of Mental Health, *Television and Behavior: Ten Years of Scientific Progress and Implications for the Eighties* (David Pearl et al. eds., 1982) p.6.

> nection between media violence and aggressive behavior in some children. The conclusion of the public health community, based on over 30 years of research, is that viewing entertainment violence can lead to increases in aggressive attitudes, values and behavior, particularly in children. Its effects are measurable and long lasting. Moreover, prolonged viewing of media violence can lead to emotional desensitization toward violence in real life.

This conclusion has been further supported by subsequent research. In March 2003, Dr. Rowell Huesmann and Dr. Leonard Eron reviewed the long-term relationship between viewing media violence in childhood and young-adult aggressive behavior. The doctors found that "both males and females from all social strata and all levels of initial aggressiveness are placed at increased risk for the development of adult aggressive and violent behavior when they viewed a high and steady diet of violent television shows in early childhood."[8] This longitudinal study was started in the 1960s and followed a group of 875 children in upstate New York, examining them at ages 8, 19, and 30.[9]

Finally, in March 2003, the Committee heard testimony from Dr. Michael Rich, Director of the Center on Media and Children's Health at the Children's Hospital of Boston, concerning neurobiological research and the impact of media violence on children. At that hearing, Dr. Rich testified that the correlation between violent media and aggressive behavior:

> . . . is stronger than that of calcium intake and bone mass, lead ingestion and lower IQ, condom non-use and sexually acquired HIV, and environmental tobacco smoke and lung cancer, all associations that clinicians accept as fact, and on which preventive medicine is based without question.

Given this evidence about the correlation between exposure to violent programming and violent behavior, many organizations have become increasingly alarmed by the increased prevalence of violent programming on broadcast, cable, and satellite television. As noted earlier, the APA estimates that a typical child will watch 8,000 murders and 100,000 acts of violence before finishing elementary school. Similarly, in 1998, a $3.5 million study, commissioned by the National Cable Television Association (NCTA) and conducted by a panel of leading educators and social scientists (The National Television Violence Report) indicated that from 1994 to 1997 the level of television violence was relatively constant, with about 60 percent of programming containing violent content, averaging about 6 violent acts per hour. During prime time viewing hours, however, the study found that the number of programs with violence increased by 14 percent on the Big Four networks, by 7 percent on independent broadcast stations, and by 10 percent on basic cable channels.

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[8] *See* L/ Rowell Huesmann *et al.*, Longitudinal Relations Between Children's Exposure to TV Violence and Their Aggressive and Violent Behavior in Young Adulthood: 1977–1992, Development Psychology, 39 (2003): 201–221.

[9] *See* L. Rowell Huesmann *et al.*, Stability of Aggression Over Time and Generations, Developmental Psychology 20 (1984): 1,120–1,134.

Moreover, the manner in which violence is portrayed on television may be a cause for concern. For example, the NCTA study reported that:

> Much of TV violence is still glamorized . . . Most violence on television continues to be sanitized . . . Less than 20 percent of violent programs portray the long-term damage of violence to the victim's family, friends, and community . . . Much of the serious physical aggression on television is still trivialized . . . Very few programs emphasize an anti-violence theme.

In 2003, the PTC conducted a study on television violence that was published in a report entitled, "TV Bloodbath: Violence on Prime Time Broadcast TV", which surveyed programming shown during the 1998, 2000, and 2002 November sweeps. The report found that the prevalence of violent programming increased in every time slot between 1998 and 2002, and that in 2002 depictions of violence were 41 percent more frequent during the 8 p.m. hour and 134.4 percent more frequent during the 9 p.m. hour than in 1998.

B. PRIOR CONGRESSIONAL ACTION

Congress has expressed concern about the amount of violence on television since the 1950s. Studies conducted in the 1950s showed that violent crime increased significantly early in that decade, and some researchers believed that the spread of television was partly to blame. In response, Congress held hearings concerning violence in radio and television and its impact on children in 1952 and 1954. In 1956, one of the first studies of television violence reported that 4 year-olds who watched the "Woody Woodpecker" cartoon were more likely to display aggressive behavior than children who watched the "Little Red Hen." After the broadcast industry pledged to regulate itself and after the FCC testified against regulatory action, Congress chose not to act.

In the early 1960s, as a follow up to the earlier Senate hearings, President John F. Kennedy and Attorney General Robert Kennedy placed significant pressure on the television networks to reduce violent content in their programming. However, the pressure yielded few results. The urban riots of the 1960s again raised concern about the link between television violence and violent behavior. In response to public concern, President Lyndon B. Johnson established the National Commission on the Causes and Prevention of Violence. The Commission's Mass Media Task Force looked at the impact of violence on television and concluded that television violence (1) has a negative impact on behavior; (2) encourages subsequent violent behavior; and (3) "fosters moral and social values about violence in daily life which are unacceptable in a civilized society." [10]

In 1969, Senator John Pastore petitioned the Surgeon General to investigate the effects of TV violence. In 1972, Surgeon General Jessie Steinfeld released a study demonstrating a correlation between television violence and violent and aggressive behavior and

[10] *See* U.S. National Commission on the Causes and Prevention of Violence, *Final Report of the National Commission on the Causes and Prevention of Violence*, Washington, D.C., U.S. Government Printing Office, December 1969, p. 199.

called for congressional action.[11] The 5 volume report concluded that there is a causal relationship between TV violence and aggressive behavior, but primarily on children presupposed to aggressive behavior.

Several more hearings were held after the release of the Surgeon General's report in the 1970s. In 1975, a report by the JAMA suggested that television violence was having a deforming effect on children, resulting in abnormal child development, and increasing levels of physical aggressiveness. In response, the AMA passed a resolution declaring television violence to be a threat to the welfare of young Americans. Despite the findings, little regulatory or congressional action was taken. However, continued concerns prompted Congress to request the FCC to study possible solutions.

On February 20, 1975, the FCC issued its "Report on the Broadcast of Violent and Obscene Material." The report recommended statutory clarification regarding the Commission's authority to prohibit certain broadcasts of obscene and indecent materials. However, with regard to the issue of television violence, the FCC did not recommend any congressional action because the industry had recently adopted a voluntary family viewing policy as part of a industry code of conduct. The policy provided that "entertainment programming inappropriate for viewing by a general family audience should not be broadcast during the first hour of network entertainment programming in prime time and in the immediately preceding hour." In 1982, the Department of Justice challenged the code on antitrust grounds wholly unrelated to the family viewing policy. The National Association of Broadcasters (NAB) ultimately eliminated code and with it went the family viewing policy.

During the 101st Congress, Senator Paul Simon (D—IL) introduced the Television Program Improvement Act. That legislation granted an antitrust exemption to permit television industry representatives to meet, consider, and jointly agree upon implementing voluntary standards that would lead to a reduction in television violence. Subsequent to the bill's enactment, industry discussions led to the release in December 1992 of joint standards regarding the broadcasting of excessive television violence. In June 1993, the networks adopted a policy to warn viewers about programs that might contain excessive violence. That policy required the following statement to be transmitted before and during the broadcasting of violent programs: "Due to some violent content, parental discretion is advised."

Despite these efforts by the industry, many in Congress believed the voluntary standards did not adequately address the concerns over television violence. In October 1993, the Committee held a hearing on television violence to consider a variety of legislative proposals. Attorney General Janet Reno testified that all the legislation pending before the Committee at that time, including S. 1383 (103rd Congress), the Children's Protection From Violent Programming Act of 1993 (Hollings-Inouye), would be constitutional. The major broadcast networks and other industry representatives argued that the amount of violent programming had declined and

[11] *See* U.S. Department of Health, Education, and Welfare, The Surgeon General's Scientific Advisory Committee on Television and Social Behavior, Television and Growing Up: The Impact of Televised Violence. *Report to the Surgeon General*, Washington, D.C., United States Government Printing Office, 1972, p. 279.

requested more time to implement proposed warning labels before Congress considered legislation. No further action was taken in the 103rd Congress.

On July 11, 1995, the Committee held a hearing on television violence to consider pending measures, including S. 470 (104th Congress), introduced by Senator Hollings and known as the "safe harbor legislation". S. 470 was identical to S. 1383. The Committee subsequently reported S. 470 without amendment on August 10, 1995 by a recorded vote of 16 to 1, with two Senators not voting. Similar legislation was reported out of Committee in the 105th Congress by a vote of 19 to 1 and in the 106th Congress by a vote of 17 to 1, with one Senator voting present.

As discussed earlier, part of the 1996 Act, Congress adopted legislation which required television manufacturers to include a device, dubbed the V-Chip for violence, capable of blocking programming with certain ratings. In conjunction with the V-Chip, the 1996 Act encouraged the video programming industry to "establish voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children," and to broadcast voluntarily signals containing these ratings.

On February 29, 1996, all segments of the television industry created the "TV Ratings Implementation Group" headed by Motion Picture Association of America (MPAA) President Jack Valenti. The group submitted its voluntary age-based ratings proposal to the FCC on January 17, 1997. The Implementation Group included the following industry groups: members from the broadcast networks; affiliated, independent, and public television stations; cable programmers; producers and distributors of cable programming; entertainment companies; movie studios; and members of the guilds representing writers, directors, producers, and actors.

These age-based ratings came under intense and immediate criticism because they failed to identify specific content that was violent, sexual in nature, or contained mature dialogue. Thus, the ratings denied parents the ability to block individual programs based on objections to the specific content of the programs. In response to these criticisms, most of the television industry agreed to a "revised ratings system" which added designators indicating whether a program received a particular rating because of sex (S), violence (V), language (L), or suggestive dialogue (D). A designator for fantasy violence (FV) was added for children's programming in the TV-Y7 category. This revised ratings system was approved by an FCC order on March 12, 1998. In that same order, the FCC required manufacturers to include V-Chip technology to block objectionable programming in at least half of televisions 13 inches or larger by July 1, 1999, and in the remaining half by January 1, 2000.

In 1998, the Kaiser Family Foundation released a report ("An Assessment of the Television Industry's Use of V-Chip Ratings") identifying two major implementation problems with the ratings system: (1) program producers or the networks were making the decisions on what ratings to use, and (2) NBC and Black Entertainment Television (BET) were not providing V-Chip compatible content ratings. Specifically, the report found that 79 percent of shows containing violence did not receive a "V" content descriptor. According to the Kaiser study, "the bottom line for parents who want to

use the V-Chip ratings to guide their children's viewing is clear: Parents cannot rely on the content descriptors, as currently employed, to block all shows containing adult language, violence or sexual content." In addition, with respect to children's programming, the failure to use the "V" descriptor and the rare use of the "FV" descriptor led the report to conclude that "there is no effective way for parents to block out all children's shows containing violence."

In addition to concerns about the application of the ratings system, national surveys conducted by the Kaiser Family Foundation after the ratings system was implemented show that an overwhelming majority of parents do not know the meaning of the content ratings. For example, a survey conducted by the Kaiser Family Foundation in 1999 found that only 3 percent of parents knew that the rating "FV" stood for "fantasy violence" and 2 percent knew that "D" stood for "suggestive dialog."[12] An update released in 2001 showed that 14 percent of parents knew the meaning of "FV" and 5 percent knew the meaning of "D."[13]

Finally, in March 2004, the Ad Council released the result of its nationwide survey of parents with children aged 2 to 17, which found that while most parents are concerned about age-appropriate television content, less than 10 percent of all parents are using the V-Chip. Furthermore, the survey found that approximately 80 percent of parents that own a television set with a V-Chip are unaware that their television has the technology.

(C) SAFE HARBOR REGULATION

Some have questioned whether limiting the distribution of violent programming to certain hours of the day would be consistent with the First Amendment of the Constitution. Attorney General Janet Reno responded to some of these questions when she testified in October 1993 that the safe harbor approach in S. 1383 and the other bills before the Committee at that time were constitutional.[14]

While no court has ruled specifically on the constitutionality of the approach taken by title II of S. 2056, there appear to be many lines of decisions that would support the constitutionality of the safe harbor approach to television violence. This legislation could fall within the ambit of the clear and present danger exception, the limitations on commercial speech and speech harmful to children, the strict scrutiny test, and a regulation of time, place, and manner. The following discussion focuses on the recent opinions concerning broadcast indecency and the strict scrutiny test as examples of the lines of analysis that appear to support the constitutionality of the safe harbor approach. This discussion is not exhaustive, and there may well be arguments to justify the legislation which do not appear below.

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[12] Kaiser Family Foundation, *How Parents feel (and what they know) about tv, the v-chip, and the tv ratings system*, (1999).

[13] Kaiser Family Foundation, *Parents and the V-Chip 2001: A Kaiser Family Foundations Survey*, (2001).

[14] Testimony of Attorney General Janet Reno, Hearing on S. 1383, the Children's Protection from Violent Programming Act of 1993, et al., before the Senate Committee on Commerce, Science, and Transportation, October 20, 1993, p. 30, 42.

(1) SAFE HARBOR UNDER AN *ACT IV* CASE ANALYSIS

The Court of Appeals decision in *ACT IV*[15] to uphold the safe harbor for broadcast indecency provides, perhaps, the best indication that the courts would uphold the safe harbor approach for television violence.

In 1992, Congress enacted legislation sponsored by Senator Robert Byrd to prohibit the broadcast of indecent programming during certain hours of the day. The Byrd amendment allowed indecent broadcasts between the hours of midnight and 6 a.m.; except for public broadcast stations that would go off the air at midnight or before were permitted to air indecent broadcasts as early as 10 p.m.[16]

On June 30, 1995, the United States Court of Appeals for the District of Columbia, sitting *en banc*, upheld the constitutionality of the Byrd amendment in *ACT IV*. The court found, in a seven to four opinion, that the safe harbor approach, also called "channeling," satisfied the two-part "strict scrutiny" test.[17]

The court found that the government met the first prong of the test by establishing that the government had a "compelling governmental interest" in protecting children from the harm caused by indecency. The court found two compelling governmental interests, and left open the possibility of a third.[18] First, the court found that "the Government has a compelling interest in supporting parental supervision of what children see and hear on the public airwaves."[19] The court cited *Ginsberg* v. *New York*, 390 U.S. 629, 638, for the proposition that government has a "fundamental interest in helping parents exercise their 'primary responsibility for [their] children's well-being' with 'laws designed to aid [in the] discharge of that responsibility."[20] Second, the court found that "the Government's own interest in the well-being of minors provides an independent justification for the regulation of broadcast indecency." It quoted the Supreme Court again in *New York* v. *Ferber*, 458 U.S. 747, 756–57 (1982) for the proposition that ". . . a State's interest in safeguarding the physical and psychological well-being of a minor is compelling. A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens. Accordingly, we have sustained legislation aimed at protecting the physical and emotional well-being of youth even when the laws have operated in the sensitive area of constitutionally protected rights."[21]

The court found that the legislation met the second prong of the test because it uses the "least restrictive means" to accomplish that governmental interest. Here, the court noted that, in choosing the

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[15] 58 F. 3rd 654 (D.C. Cir. 1995)

[16] Congress had already prohibited obscene and indecent broadcasts many years earlier. Section 1464 of title 18, United States Code, prohibits the broadcast of any obscene, indecent, or profane language by means of radio communication. This language was enacted first in the Radio Act of 1927, again as part of section 326 of the Communications Act of 1934, and was moved into title 18 in 1948.

[17] While the court upheld the safe harbor approach implemented by the Byrd amendment, it found that the different treatment of certain public broadcast stations was unjustified. The court thus directed the FCC to modify its rules to apply a consistent safe harbor of 6 a.m. to 10 p.m. for all broadcast stations.

[18] The court found it unnecessary to address the FCC's contention that there is also a compelling governmental interest in protecting the home against intrusion by offensive broadcasts. *ACT IV*, 660-661.

[19] Ibid.

[20] Ibid.

[21] Ibid.

hours during which indecency would be banned, the government must balance the interests of protecting children with the interests of adults. "The question, then, is what period will serve the compelling governmental interests without unduly infringing on the adult population's right to see and hear indecent material." [22]

After reviewing the evidence compiled by the FCC, the court upheld the determination that a ban on indecent programming during the hours of 6:00 a.m. to 10:00 p.m. satisfied the balance and was the least restrictive means. The court noted that, to the extent that such a ban affected the rights of adults to hear such programming, "adults have alternative means of satisfying their interest in indecent material at other hours in ways that pose no risk to minors [such as renting videotapes, computer services, audio tapes, etc.]." [23] The court stated further that, "[a]lthough the restrictions burden the rights of many adults, it seems entirely appropriate that the marginal convenience of some adults be made to yield to the imperative needs of the young." [24]

The reasoning of the court in *ACT IV* appears to apply equally to title II of S. 2056. As with indecency, the government has a compelling interest in protecting the moral and psychological well-being of children against the harm of viewing television violence. Also as with indecency, restricting television violence to certain hours of the day balances the rights of adults to watch violent programming with the interests of protecting children. Adults have other ways of obtaining access to violent programming just as they have other ways of obtaining indecent materials. Thus, the decision upholding the safe harbor for indecency appears to provide strong support for finding a safe harbor for violence to be constitutional.

(2) THE STRICT SCRUTINY TEST

The strict scrutiny test, which was used in the *ACT IV* case, is the most stringent test used to analyze the constitutionality of a First Amendment challenge. The following discussion assesses the violence safe harbor approach under strict scrutiny, not because it is certain that this test will apply, but because, if the violence safe harbor approach passes the strict scrutiny test, it certainly would pass any lesser standard of review. Regulation will pass the strict scrutiny test if the regulation is narrowly tailored to meet a compelling governmental interest.

Congress has developed a long and detailed record to justify the violence safe harbor approach. Congress has held hearings to explore various approaches to television violence in every decade since the 1950s. The Senate Committee on Commerce, Science, and Transportation alone has held 25 hearings over the past 3 decades on this topic, including at least 5 hearings specifically on the safe harbor approach. The Committee has laid extensive groundwork for considering the least restrictive means of protecting children from violence on television. By contrast, the Byrd amendment, the legislation at issue in the *ACT IV* case, was adopted on the Senate floor without any Committee hearings.

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[22] Ibid., 665.
[23] Ibid., 666.
[24] Ibid., 667.

(a) Compelling Governmental Interest

The government has several compelling interests in protecting children from the harmful effects of viewing violence which are discussed below: an interest in protecting children from harm, an interest in protecting society in general, an interest in helping parents raise their children, and an interest in the privacy of the home. Each of these are discussed below.

Harm to Children

Government has a compelling interest in protecting children from the harm caused by television violence. As several witnesses have testified before the Committee and numerous studies have concluded, children's viewing of violence on television encourages violent and anti-social behavior, either as children or later as adults. These studies have demonstrated a causal connection between viewing violence and violent behavior.[25] These studies have included field studies of the effect of television on persons in real life and laboratory studies. While the study in 1972 by the Surgeon General concluded that there was a causal relationship between viewing violence and behavior primarily among those children predisposed to violence, more recent research by NIMH and others demonstrates that violent television programming affects almost all children. Over 35 years of laboratory and real-life studies provide evidence that televised violence is a cause of aggression among children, both contemporaneously, and over time. Television violence affects youngsters of all ages, both genders, at all socioeconomic levels, and at all levels of intelligence. The effect is not limited to children who are already disposed to being aggressive, and it is not restricted to the United States.[26] While it is perhaps axiomatic that children who become violent because of television suffer harm, it is worth noting that such children suffer harm in many ways. For example, children exposed to excessive violence can become anti-social, distant from others, and unproductive members of society, especially if their actions arouse fear in other people. They can suffer from imprisonment or other forms of criminal punishment if their violence leads to illegal behavior. Violent behavior may not be the only harm caused by viewing violent television. According to the APA, viewing violence can cause fearfulness, desensitization, or an increased appetite for more violence.

Harm of Society

A related compelling governmental interest is the need to protect society as a whole from the harmful results of television-induced violent behavior. A child who views excessive amounts of television violence is not the only person who suffers harm. In his testimony in 1999, Dr. Eron testified that violent programming can adversely affect society because children who watch excessive amounts of television when they are young are more "prone to be convicted for more serious crimes

[25] Among these are studies conducted by the American Medical Association, the American Psychological Association, the National Institute of Mental Health, the Center for Disease Control, and numerous studies by individual researchers.

[26] Written Testimony of Dr. Leonard Eron, Professor of Psychology and Senior Research Scientist, Institute for Social Research, University of Michigan, before the Senate Committee on Commerce, Science, and Transportation, Communications Subcommittee, May 18, 1999.

by age 30; more aggressive while under the influence of alcohol; and, harsher in the punishment they administered to their own children."[27]

Helping Parents Supervise Their Children

In addition to the governmental interests in protecting children and society from harm, the courts have also recognized a compelling governmental interest in helping parents supervise what their children watch on television. In *Ginsberg*, the Supreme Court upheld a New York statute making it illegal to sell obscene material to children. The Court noted that it was proper for legislation to help parents exercise their "primary responsibility for [their] children's well-being with laws designed to aid [in the] discharge of that responsibility."[28]

Privacy of the Home

The government's interest in protecting the privacy of the home from intrusion by violent programming may provide another compelling governmental interest. The Supreme Court has recognized that "in the privacy of the home . . . the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder."[29] The right to privacy in one's home was recently used to uphold legislation limiting persons from making automated telephone calls to residences and small businesses.[30] Just as subscribers to telephones do not give permission to telemarketers to place automated telephone calls, the ownership of a television does not give programmers permission to broadcast material that is an intrusion into the privacy of the home.

(b) The Least Restrictive Means

Opponents of the legislation argue that the safe harbor approach to television violence is not the least restrictive means of accomplishing the goals of reducing children's exposure to television violence. Some in the broadcast industry argue that the industry should be trusted to regulate itself. Parents should bear the primary responsibility for protecting their children, according to some observers. Others say that the warnings and advisories that many programmers now add to certain shows are a lesser restrictive means of protecting children. In addition, opponents of legislation assert that the V-chip and the television ratings system provide a less restrictive means of protecting children.

In *United States* v. *Playboy*, 329 U.S. 803 (2000), the Supreme Court invalidated a provision in the 1996 Act that required cable operators to either scramble sexually explicit channels in full, or limit programming on such channels to hours when children are not likely to be watching. The Court held that the provision was a content based restriction. The

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[27] Written Testimony of Dr. Eron before the Senate Committee on Commerce, Science, and Transportation Communications Subcommittee, July 12, 1995, p. 2. Dr. Eron further warns that ". . . like secondary smoke effects, . . . don't think that just because you have protected your child from the effects of television violence that your child is not affected. You and your child might be the victims of violence perpetrated by someone who as a youngster, did learn the motivation for and the techniques of violence from television." Ibid.

[28] *Ginsberg v. New York*, 390 U.S. 629, 639 (1968).

[29] *FCC v. Pacifica Foundation*, 438 U.S. 726, 748 (1978).

[30] *Moser v. FCC*, 46 F.3d 970 (9th Cir. 1995).

Court further held that the requirements of the provision were not the least restrictive means of achieving the government's goal. The Court found that another provision in the 1996 Act, that required cable operators to fully block any channel upon request by a subscriber provided a less restrictive alternative. The Court added that even if this option was not widely used by cable subscribers, the government bears the burden of proving that the available alternative is not effective. Title II of S. 2056 is crafted in part to respond to *Playboy*. The FCC is only directed to implement a safe harbor for violence after it determines that the V-chip and ratings system are ineffective alternative means of protecting children from television violence. Prior to reaching such a determination, the FCC is directed to prohibit violent programming that is not electronically blockable, *i.e.*, that is not encoded specifically with a rating for violent content.

While the Committee cannot predict the outcome of the FCC's analysis of the effectiveness of the V-chip and the ratings system, the Committee does note that parental supervision alone may not sufficiently protect children from violence on television. For example, the problem of children's exposure to violence on television is especially acute for residents of inner city neighborhoods. According to Gael Davis of the National Council of Negro Women, "Violence is the No. 1 cause of death in the African-American community. . . . [I]n south central [Los Angeles], . . . [t]he environment is permeated with violence. It is unsafe for children to walk to and from school. We have 80 percent latch-key children, where there will be no parent in the home during the afterschool hours when they are viewing the television. The television has truly become our electronic babysitter." [31]

Many children do not have the benefit of parents willing and able to monitor the television programming they watch. According to William Abbott of the Foundation to Improve Television, "millions of children watch television unsupervised, one-fourth of our children have but a single parent (the latch-key kids)." [32]

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Under the "strict scrutiny" test, a regulation that limits freedom of speech based on the content must use "the least restrictive means to further the articulated interest." [33] As the following discussion demonstrates, in the absence of an effective V-chip and content based ratings system, the safe harbor approach is the only approach that has a significant chance of furthering the compelling governmental interest in protecting American children from the impact of television violence.

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[31] Testimony of Gael T. Davis, President, East Side Section, National Council of Negro Women, Hearing on S. 1383, the Children's Protection from Violent Programming Act of 1993, et al. before the Senate Committee on Commerce, Science, and Transportation, October 20, 1993.

[32] Testimony of William Abbott, President, Foundation to Improve Television, before the Committee on Commerce, Science, and Transportation, Hearing on Television Violence, July 12, 1995.

[33] *Sable Communications of California., Inc* v. *FCC*, 492 U.S. 115, 126 (1989).

Industry Self-Regulation

The television industry has been directed to improve its programming by Congress for over 40 years. The first congressional hearings on television violence were held in 1952. Hearings were held in the Senate in 1954 and again in the 1960s, 1970s, 1980s, 1990s, and again, three times since 2000. At many of these hearings, representatives of the television industry testified that they were committed to ensuring that their programming was safe and appropriate for children. In 1972, the Surgeon General called for Congressional action, but this call was ignored after the broadcast industry reached an agreement with the FCC to restrict violent programs and programs unsuitable for children during the family hour. There is substantial evidence, however, that despite the promises of the television industry, the amount of violence on television is far greater than the amount of violence in society and continues to increase. According to one study, "[s]ince 1955, television characters have been murdered at a rate one thousand times higher than real-world victims. Indeed, television violence has far outstripped reality since the 1950s."[34] The incentives of the television industry to air violent programming are best illustrated by a quote from a memo giving directions to the writers of the program "Man Against Crime" on CBS in 1953: "It has been found that we retain audience interest best when our stories are concerned with murder. Therefore, although other crimes may be introduced, somebody must be murdered, preferably early, with the threat of more violence to come."[35]

In December 1992, the 4 broadcast networks released a common code of standards that many criticized for being weaker than the networks' own code of practices. In any case, the code appears to have had little effect on the amount of violence on television.

Recent efforts by the broadcast and cable industries to educate parents about the V-chip and channel blocking can be viewed as another effort to avoid regulation without affecting the amount of violent programming to which children are exposed.

Warning Labels

Some observers argue that a requirement to put warnings or parental advisories before certain violent programs would be a less restrictive means of satisfying the Government's interest in protecting children. The Committee has received no evidence, however, that such warnings accomplish the purpose of protecting children. Despite the industry's efforts to air such advisories on their own initiative, the National Parent-Teacher's Association and the Foundation to Improve Television support a safe harbor approach. Indeed, there is some reason to believe that advisories may increase the amount of violence on television, as some observers believe that programmers may

[34] S. Robert Lichter, Linda S. Lichter, and Stanley Rothman, Prime Time: How TV portrays American Culture, (Regnery Publishing, Inc., Washington, D.C., 1994), p. 275.
[35] Quoted in Eric Barnouw, The Image Empire, p. 23.

want a warning label to be placed on a program in order to attract viewers.[36]

Therefore, without parental supervision, such warning labels may have the opposite effect of increasing the number of children who watch violent programming. In addition, warnings that appear once at the very beginning of a program may not be seen by a viewer who does not see the beginning of a program. Furthermore, it is difficult to believe that such warnings would be effective in the age of channel surfing.

Parental Responsibility and Control Technologies

Some observers believe that parents should bear the primary responsibility for protecting their children from violent programming, and that a variety of technologies are now available to assist parents in controlling the programs that their children watch. For several reasons, these approaches do not appear to be effective.

Even when parents are available and concerned about the television programs that their children watch, they may not be able to monitor their children's television viewing habits at all times. According to one survey, 66 percent of homes have three or more television sets, and 54 percent of children have a TV set in their own bedrooms. Children often watch television unsupervised. In fact, 55 percent of children usually watch television alone or with friends, but not with their families.

The implementation of the safe harbor approach is contingent upon the FCC finding that the content based ratings system, when used in conjunction with the V-chip, provides an ineffective means of protecting children from television violence. If the FCC makes such a determination, it is unlikely that other technology-based solutions will more appropriately address the issue of children and television violence. In addition, technology-based solutions may require parents to spend money to purchase the new technologies. Development of such technologies are also uncertain. There are also questions about the ability of parents to program the technologies effectively. In many households, the children often are more comfortable with the technologies than the parents.

(3) DEFINITION OF VIOLENT VIDEO PROGRAMMING

Title II of S. 2056 adopts the same approach toward violent video programming as Congress has previously adopted for indecency. Section 1464 of title 18 prohibits the broadcast of indecency but does not contain a definition of the term. In 1975, the FCC adopted a definition of indecency that the courts have upheld. While it may be difficult to craft a definition of violent video programming, that is not overbroad, that is not vague, and that is consistent with the research of harm caused to children, these are exactly the tasks that the FCC was created to perform. The FCC can hold its own hearings, seek comment from the industry and the public, and review the research in detail in order develop a definition that satisfies constitutional scrutiny.

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[36] For example, Ms. Lindsay Wagner, a television actress, testified in 1993 that film makers sometimes lobby to get an R rating. "We now have a couple of generations that have been reared on violence for fun and many flock to the films with warnings." Testimony of Ms. Lindsay Wagner, Hearing on S. 1383, the Children's Protection from Violent Programming Act of 1993, before the Senate Committee on Commerce, Science, and Transportation.

Some observers cite the case of *Video Software Dealers Association* v. *Webster* to support the position that legislation to restrict violent video material is unconstitutional.[37] That case, however, concerned a statute that neither contained a definition of violent video material nor delegated the definition to an expert regulatory agency. Title II of S. 2056, by contrast, does not take effect until the FCC issues a definition of violent video programming. In *Davis-Kidd Books* v. *McWherter*, the court overturned a statute that contained a definition that was overly vague.[38] While this case demonstrates the difficulty of defining violent video programming, it does not stand for the proposition that such term is incapable of being defined.

(4) APPLICABILITY TO MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTION SERVICES

Some question the constitutionality of restricting violence on multichannel video programming distribution (MVPD) services, including cable and direct broadcasting satellite (DBS), noting that *Red Lion*,[39] *Pacifica,* and the *ACT* cases pertain only to broadcasting, not to cable or any other form of media. However, the strict scrutiny test applies to any content regulation, not just those imposed on broadcast stations. Court cases indicate that a restriction on violent video programming could, potentially, be imposed on any media if it satisfies the strict scrutiny test.[40] The court's rationale for subjecting broadcasting to a more restrictive treatment includes, the scarcity of broadcast frequencies, the pervasive presence of broadcast, and accessibility of broadcast to children. In recognizing the special status of broadcasting, the Supreme Court, in the *National Broadcasting Co.* and *Red Lion* cases, concluded that due to spectrum scarcity, broadcast frequencies are not available to all who wish to use them. The Supreme Court in *ACT IV*, addressed the pervasive presence of broadcast and its accessibility to children. The Court stated, "the broadcast media have established a uniquely pervasive presence in the lives of all Americans. Patently offensive, indecent material presented over the airwaves confronts the citizen, not only in public, but also in the privacy of the home, . . . Second, broadcasting is uniquely accessible to children . . . The ease with which children may obtain access to broadcast material, . . . amply justifies special treatment of indecent broadcasting.[41] The *ACT IV* court further noted that "broadcast audiences have no choice but to 'subscribe' to the entire output of traditional broadcasters."[42]

Just as with broadcast television, MVPD services have grown to have a uniquely pervasive presence in the lives of all Americans and are uniquely accessible to children. Over 85 percent of households now receive some form of MVPD service, with 90 percent of such households choosing expanded basic offerings. From the perspective of the viewer, and especially children, there is little if any distinction between broadcast programs and expanded basic programs that are carried on a MVPD system.

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[37] 968 F.2d 684 (8th Cir. 1992).
[38] 866 S.W.2d 250 (1993).
[39] *Red Lion Broadcasting Company v. FCC*, 395 U.S. 367 (1969).
[40] The court in *ACT IV* states, "[W]e apply strict scrutiny to regulations of this kind [concerning indecency] regardless of the medium affected by them. . . ." *ACT IV*, at 660.
[41] Ibid., 659–660.
[42] Ibid., 660.

Two recent Supreme Court cases indicate that it is permissible to regulate pay-TV platforms. The Supreme Court, in *Denver Area Educational Telecommunications Consortium, Inc.* v. *FCC*,[43] addressed the constitutionality of section 10 of the Cable Television Consumer Protection and Competition Act of 1992. Although the Court struck certain provisions of section 10, it held that section 10(a), which permits cable operators to decide whether or not to broadcast indecent programs on leased access channels, is consistent with the First Amendment.

In *Playboy*, the Supreme Court addressed the constitutionality of section 505 of the 1996 Act. While the court struck down the provisions in question, it did so on the grounds that it was not the least restrictive alternative, not because Congress cannot regulate content on cable.

In fact, the District Court opinion in *Playboy* stated that, ". . . cable television is a means of communication which is pervasive and . . . [t]he Supreme Court has recognized that cable television is as accessible to children as over-the-air broadcasting, if not more so." [44] Moreover, the Supreme Court in its consideration of freedom of speech under the First Amendment has recognized the need to protect children from sexually explicit material, particularly in the context of a pervasive medium.[45]

Title II of S. 2056 is not intended to apply to premium or pay-per-view channels in recognition of the fact that parents have the choice to subscribe to these channels on an individual basis. This distinction between premium channels and pay-per-view programs, on the one hand, and basic or expanded basic packages of cable or DBS programs, on the other, demonstrates the Committee's attempt to balance the rights of children and the legitimate rights of parents to watch the programs that they want to watch. In this way, the legislation avoids unnecessarily interfering with parents' First Amendment rights in order to meet the least restrictive means test.

LEGISLATIVE HISTORY

Senators Brownback (for himself, Mr. Allen, and Mr. L. Graham) introduced S. 2056 on February 9, 2004. The Committee held a hearing on indecent and violent programming and its effect on children on February 11, 2004 where all five FCC Commissioners testified.

On March 9, 2004, the Committee held an executive session at which S. 2056 was considered. The bill was approved unanimously by voice vote and was ordered reported with amendments. The Committee first approved a perfecting amendment by Senators McCain and Brownback that would impose a per-utterance penalty; require the FCC to consider a number of factors when assessing a fine; create a cap on the total amount a broadcast licensee may be fined during a 24-hour period; establish deadlines for the FCC to act on indecency complaints; and compel the FCC to report to Congress annually about its indecency enforcement activities. The perfecting amendment was modified by a second-degree amendment

[43] *Denver Area Educational Telecommunications Consortium, Inc.* v. *FCC*, 518 U.S. 727 (1996).
[44] *Playboy Entertainment Group* v. *United States*, 945 F. Supp. 722 (1996).
[45] *Pacifica*, 438 U.S. at 750–51.

by Senator Stevens that would create an escalating fine structure; double the cap on fines if the FCC finds certain aggravating factors present; and require the FCC to commence a license revocation proceeding against any licensee that has paid, or been ordered by a court to pay, fines arising from three indecency violations during its license term. Additionally, the Committee approved an amendment offered by Senator Stevens that would eliminate any restrictions on broadcasters or associations representing broadcasters from instituting a voluntary industry code of conduct governing a family viewing policy. The Committee also approved an amendment by Senators Stevens and Allen that would "streamline" the process for imposing financial penalties against non-licensees who violate 18 U.S.C. 1464, and increase the cap on fines against non-licensee violators. An amendment by Senators Dorgan, Lott, Snowe, and Cantwell was approved that would require the relationship between media consolidation and indecent broadcasts to be studied by the General Accounting Office (GAO) and would suspend the FCC's June 2, 2003, media ownership rules while the GAO conducts its study.

The Committee also approved an amendment by Senators Hollings and Stevens that would require the FCC to study the effectiveness of the V-Chip and prohibit the distribution of violent video programming during the hours when children are reasonably likely to comprise a substantial portion of the audience, if the V-chip is determined to be ineffective.

The amendment is substantially similar to legislation previously reported favorably by the Committee. In October, 1993, the Committee held a hearing on television violence to consider a variety of legislative proposals. Attorney General Janet Reno testified that the legislation pending before the Committee, including S. 1383, the Hollings-Inouye legislation establishing a safe harbor for violent programming, would be constitutional.

On July 11, 1995, the Committee held its second hearing on television violence to consider pending measures, including S. 470, the Hollings safe harbor legislation. S. 470 (104th Congress) is identical to S. 1383 (103rd Congress). The Committee subsequently reported S. 470, as introduced, on August 10, 1995, by a recorded vote of 16 to 1, with two Senators not voting. No further action was taken during the 104th Congress.

On February 26, 1997, Senator Hollings with Senators Inouye and Dorgan as co-sponsors, introduced S. 363. S. 363 was similar to S. 470 but allowed the Commission to implement a safe harbor if it did not implement a content-based ratings system. On February 27, 1997, the Committee held another hearing on television violence in which S. 363 was addressed. Groups such as the APA expressed their disapproval of the current age based rating system proposed by the industry and noted their preference for a content-based ratings system. Kevin Saunders, Professor of Law at the University of Oklahoma, testified that violent programming could arguably be considered obscene or indecent and the safe harbor approach is constitutional.[46] On May 1, 1997, the Committee reported

[46] Testimony of Kevin Saunders, J.D., Ph.D. before the Senate Committee on Commerce, Science, and Transportation, February 27, 1997. p. 17 and 7.

S. 363 with one amendment to add findings by a recorded vote of 19 to 1.

On April 26, 1999, Senator Hollings introduced S. 876, safe harbor legislation that was substantially similar to S. 470 and S. 1383. The bill was co-sponsored by Senators Byrd, Durbin, and Inouye. On May 13, 1999, the Committee held its third hearing on television violence and safe harbor legislation. Senator Hollings' bill, S. 876 was discussed at length, and testimony was offered as to the constitutionality of the measure as well as the adverse harm to children affected by exposure to violence on television. On September 20, 2000, the Committee reported S. 876, as amended, by a recorded vote of 17 to 1, with one Senator voting present.

On April 10, 2003, the Committee held its fourth hearing on the impact of violent material on children. Specifically, the witnesses testified on neurobiological research in the field of brain mapping and conclusions reached on the impact of media violence on children. On February 1, 2004, the Committee held its fifth hearing on television violence. Senator Hollings safe harbor legislation, S. 161, which was incorporated with minor changes as an amendment into S. 2056, was discussed by the five FCC Commissioners.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 2, 2004.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2056, the Broadcast Decency Enforcement Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Melissa E. Zimmerman (for federal costs), Sarah Puro (for the impact on state and local governments), and Jean Talarico (for the impact on the private sector).

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 2056—Broadcast Decency Enforcement Act of 2004

Summary: S. 2056 would increase the maximum civil penalty for broadcasting obscene, indecent, or profane material. (Such penalties are recorded in the federal budget as revenues.) The bill also would change current law and existing regulations concerning violent programming and ownership of multiple media outlets. Under the bill, CBO estimates that revenues resulting from those penalties would increase by less than $250,000 in 2004 and by about

$2 million over the 2005–2009 period. CBO estimates that implementing S. 2056 would increase spending subject to appropriation by less than $500,000 in 2004 and about $1 million over the 2005–2009 period. The bill would not affect direct spending.

S. 2056 contains an intergovernmental mandate as defined by the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the resulting costs would not be significant and would not exceed the threshold established in UMRA ($60 million in 2004, adjusted annually for inflation).

S. 2056 would impose private-sector mandates as defined in UMRA on the owners of television networks, broadcast stations, cable operators, and providers of satellite broadcast service. CBO cannot determine whether the total cost to the private sector would exceed the threshold for private-sector mandates established by UMRA ($120 million in 2004, adjusted annually for inflation). We do not have any basis for predicting what regulations the FCC would issue regarding violent video programming, the distributors' response to those regulations, or the viewers' and advertisers' response to those changes.

Estimated cost to the Federal Government: S. 2056 would increase the monetary penalties assessed by the Federal Communications Commission (FCC) for broadcasting obscene, indecent, or profane material. For broadcast licensees, the maximum penalty for each violation would increase from about $25,000 to $275,000 for the first violation, $375,000 for the second violation, and $500,000 for the third violation. If the FCC determines that a violation is aggravating in nature, those fines would double. The maximum fine would be $3 million for violations occurring within a 24-hour period. The maximum penalty for individuals would increase from about $10,000 to $500,000. According to the FCC, prior assessments for each violation have been around $50,000 per year recently—however, annual collections have varied widely. For example, the FCC did not collect any penalties for indecency violations in 2003 but has collected $800,000 during the first five months of fiscal year 2004.

CBO estimates that under S. 2056, collections of penalties for broadcasting obscene, indecent, or profane material would increase by less than $250,000 in 2004 and on average less than $500,000 per year over the 2005–2009 period. The increase in collections could be much higher or lower considering that the number of penalties varies widely from year to year.

S. 2056 also would void regulations issued by the FCC on June 2, 2003, pertaining to the ownership of television stations, radio stations, and newspapers. That provision would reinstate the regulations concerning ownership of multiple media outlets that were in effect before that date. Finally, S. 2056 would require the FCC to issue regulations regarding a ban on violent programming during times when children are likely to be in the audience and conduct an annual report on the effectiveness of the current ratings system and the "V-Chip" technology that electronically blocks violent programming. Based on information provided by the FCC, CBO estimates that those tasks would increase spending subject to appropriation by less than $500,000 in 2004 and by about $1 million over the 2005–2009 period.

Estimated impact on state, local, and tribal governments: Section 715 contains an intergovernmental mandate as defined by UMRA because it would prohibit the transmission to the public of certain violent programs unless those programs can be blocked by electronic means during hours when children are likely to comprise a substantial portion of the audience. To comply with this mandate, distributors, including public broadcasters, would be required either to reschedule or to not transmit certain violent programs that do not include a code allowing them to be blocked electronically. According to the Corporation for Public Broadcasting, all Public Broadcasting Station programs are so encoded; therefore, CBO estimates that the associated costs of the mandate would be minimal and would not exceed the threshold established in UMRA ($60 million in 2004, adjusted annually for inflation).

Although the provisions in title I of the bill do not constitute a mandate as defined by UMRA, to the extent that public broadcasters would be affected by the increased penalties for indecency, they would incur additional costs. However, CBO estimates that those additional costs, if any, would be minimal because complaints regarding indecency against publicly owned broadcasting outlets are rare.

Estimated impact on the private sector: S. 2056 would impose private-sector mandates as defined in UMRA on the owners of television networks, broadcast stations, cable operators, and providers of satellite broadcast service. CBO cannot determine whether the total cost to the private sector would exceed the threshold for private-sector mandates established by UMRA ($120 million in 2004, adjusted annually for inflation). We do not have any basis for predicting what regulations the FCC would issue regarding violent video programming, the distributors' response to those regulations, or the viewers' and advertisers' response to those changes.

Broadcast Media Ownership Rules

Under the Consolidated Appropriations Act of 2004 enacted January 23, 2004, a broadcast network can own and operate local broadcast stations that reach up to 39 percent of households nationwide. S. 2056 would reinstate the FCC's ownership rules that were in effect on June 1, 2003. This reinstatement would require owners of commercial television broadcast stations that have a national audience reach exceeding 35 percent to divest itself of such licenses as may be necessary to come into compliance with that limitation.

According to the FCC, two companies would exceed the cap—Viacom Inc. (the owner of CBS) and News Corps. (the owner of Fox). Based on information from government and industry sources, CBO estimates that Viacom Inc. and News Corps. would likely be able to sell their stations at a fair market value. Therefore, the cost of this mandate would be only the transaction costs involved in the sale.

Children's Protection From Violent Programing

The bill would impose a private-sector mandate by prohibiting the distribution to the public of certain violent programs unless they can be blocked by electronic means during hours when children are reasonably likely to comprise a substantial portion of the

audience. The mandate would affect television networks, broadcast stations, cable operators, and providers of satellite broadcast services. Certain satellite and cable premium and pay-per-view programs would be exempt, and the FCC could exempt other programs, such as news and sports.

To comply with the mandate, the distributors would be required to either code programs or reschedule or not transmit certain violent programs that do not include a code, allowing them to be blocked electronically. Information from the FCC and industry representatives indicates that most programs currently include coding that allows them to be blocked electronically. Thus, the mandate would effectively require changes to only a small number of programs.

The cost to encode a program is not high, therefore, the greatest potential cost to the private sector would be any loss of new revenues associated with changes in the scheduling or nontransmission of those violent programs that are not encoded.

The bill also would require that the FCC assess the effectiveness of electronic blocking and rating system on the protection of children from violent programming. If the FCC determines that those measures are not effective, the FCC would be required to complete a rulemaking that would prohibit the distribution of violent video programming during the hours when children are reasonably likely to comprise a substantial portion of the audience. Such a ruling by the FCC would impose a private-sector mandate on the distributors of violent programs.

CBO cannot estimate the cost of those mandates. We do not have any basis for predicting the FCC's decision regarding the effectiveness of electronic blocking and ratings on the protection of children from violent programing, the details of the regulations the FCC would issue, the distributors' response to those regulations, or the viewers' and advertisers' response to those changes.

Previous CBO estimate: On March 8, 2004, CBO transmitted a cost estimate for H.R. 3717, the Broadcast Decency Enforcement Act of 2004, as ordered reported by the House Committee on Energy and Commerce on March 3, 2004. Both bills would impose a similar increase on monetary penalties assessed by the FCC for broadcasting obscene, indecent, or profane material, and therefore, would have the same effect on revenues.

S. 2056 differs from H.R. 3717 because the Senate bill contains a provision that would prohibit the transmission to the public of certain programs unless blocked by electronic coding. That provision is a mandate as defined by UMRA, while H.R. 3717 contains no new mandates.

Estimate prepared by: Federal Costs: Melissa E. Zimmerman; Impact on State, Local, and Tribal Governments: Sarah Puro; and Impact on the Private Sector: Jean Talarico.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

S. 2056 would increase the forfeiture amount for violators of 18 U.S.C. 1464 as well as make other changes to the Act. The number of persons covered by the Act would not expand as broadcasters, multichannel video programming distributors, and certain non-broadcast licensees are already covered by the Act. The bill, however, would expand the scope of regulated conduct by these persons. Specifically, broadcasters and multichannel video program distributors could face new prohibitions on distributing violent video programming, and would be subject to fines under section 502 of the Act for distribution of violent video programming not blockable by electronic means.

ECONOMIC IMPACT

Although the legislation may have an adverse economic impact on those who violate 18 U.S.C. 1464, this impact will assist the FCC in better enforcing the prohibition on broadcasting indecent, profane, or obscene material. Moreover, the legislation would impact television networks, broadcast stations, and cable programmers insofar as these entities would now be required to determine when to air certain programming if they do not currently offer content-specific ratings for violent programming. However, if networks and broadcasters pass on content-specific ratings to cable and satellite providers, the law will have no adverse economic impact. The networks and broadcast stations already have standards and practices departments that review all programs for their content. The legislation would require only these reviewers to add an analysis of the violent content to the analyses that they currently conduct.

PRIVACY

S. 2056 is not expected to have an adverse effect on the personal privacy of any individuals that will be impacted by this legislation.

PAPERWORK

S. 2056 would have a minimal impact on current paperwork levels.

SECTION-BY-SECTION ANALYSIS

TITLE I—BROADCAST DECENCY

Section 101. Short Title.

This section would provide that the legislation may be cited as the "Broadcast Decency Enforcement Act of 2004."

Section 102. Increase in Penalties for Obscene, Indecent, and Profane Broadcasts.

This section would increase the cap on fines for violations of 18 U.S.C. 1464. The maximum fines would increase from $27,500 to $275,000 for the first violation, $375,000 for the second violation, and $500,000 for the third and any subsequent violation. A "violation" shall be any individual utterance or showing of indecent material. For example, within one radio program, a broadcast licensee may be fined $500,000 for the third time an indecent word is uttered during that program. However, this section establishes a cap of $3 million dollars for the amount that may be assessed against

a licensee or permittee in any given 24 hours. This section does not require the FCC to assess the maximum for any violation. The FCC would retain the latitude to determine an appropriate fine up to the maximum, except that it would be required to consider the violator's ability to pay when assessing a fine and the size of the markets in which the station is located, in addition to those factors set forth in section 503(b)(2)(D).

This section also mandates commencement of a license revocation proceeding by the FCC against any licensee that repeatedly violates 18 U.S.C. 1464 during the term of its license. If 3 times during the term of a license, a licensee pays a fine for the broadcast of obscene, indecent, or profane material or a court of competent jurisdiction orders the licensee to pay such a fine, then the FCC shall commence a proceeding under section 312 of the Act to revoke that station's license. This section does not prevent the FCC from commencing a license revocation proceeding against any licensee who violates 18 U.S.C. 1464 at any time even after a single indecency violation, and even if the licensee has never paid a fine for such a violation.

Section 103. Additional Factors in Indecency Penalties; Exception.

This section lists additional factors the FCC should take into consideration when assessing the degree of culpability of the violator. The factors that may be considered by the FCC to either enhance or mitigate penalties include: (1) whether the material was live or recorded, scripted or unscripted; (2) whether the licensee had a reasonable opportunity to review the programming or had reason to believe it may contain obscene, indecent, or profane material; (3) whether the violator used a time delay blocking mechanism in originating live or unscripted programming; (4) the size of the viewing or listening audience; (5) the size of the market; and (6) whether the material was aired during a children's television program, or television programs rated for general audience viewing, or aired on radio when the audience is likely to include children.

This section also allows the FCC to double fines, and doubles the total cap on fines, if the Commission determines certain aggravating factors to be present, including: (1) the material was scripted or recorded; (2) the violator had a reasonable opportunity to review the script or recording, thereby demonstrating that the violator had knowledge that indecent, obscene, or profane material would be aired, or otherwise had a reasonable basis to believe that live or unscripted programming would contain indecent material; (3) the violator failed to block live or unscripted programming; (4) the size of the audience was substantially larger than usual, such as the Super Bowl, the Academy Awards or similar programs; and (5) the violation occurs during a children's television program.

Section 104. Indecency Penalties for Non-Licensees.

This section would streamline the existing process for fining non-licensees for violations of 18 U.S.C. 1464. This section would permit the FCC to fine persons who utter obscene, indecent, or profane material willfully or intentionally and who should have known that such material would be broadcast without any prior citation. It would also raise the limit on such a fine to $500,000 for each viola-

tion. A "violation" may be an individual utterance of indecent material.

The Committee does not believe this section should be used to fine persons who had no reason to believe such an utterance or showing would be broadcast, or had reason to believe that it would be broadcast during a time when such utterances are permitted (*e.g.* 10 p.m. to 6 a.m.). Willful and intentional are similar terms that denote an act done knowingly, purposely and intentionally.[47] If, for example, an athlete or coach in the heat of a sporting event (such as a baseball player being hit by a pitch) spontaneously or reflexively yells out an obscene, indecent, or profane utterance caught by a field microphone, the Committee believes that person would not be subject to a fine since his actions were not done purposely and intentionally. The Committee also expects the FCC to afford individuals the same protections as licensees when determining the degree of culpability of the non-licensee.

Section 105. Voluntary Industry Code of Conduct Governing Family Television Viewing.

The Committee encourages broadcast licensees and networks to develop "family viewing" programs for the first hour of prime time each night and in the immediately preceding hour when the audience may likely contain children. It is the Committee's intention that such programming aired during these two hours would be suitable for families to view together.

In April 1975, the NAB developed a Code of Conduct for Television, which included a family viewing policy. The policy provided that "entertainment programming inappropriate for viewing by a general family audience should not be broadcast during the first hour of network entertainment programming in prime time and in the immediately preceding hour." In 1976, the family viewing policy was challenged, but ultimately the appeals court, in a jurisdictional ruling, found that the Commission and not the district court was the right forum to decide the case in the first instance.[48] Although the decision of the Court of Appeals was jurisdictional, that court suggested considerable doubt about the district court's judgment,"It simply is not true that the First Amendment bars all limitations of the power of the individual licensee to determine what he will transmit to the listening and viewing public." Additionally, this section would prevent the Department of Justice from precluding the broadcasters and the networks from developing a "family viewing policy" due to antitrust concerns.[49]

Section 106. Deadlines for Action on Complaints.

This section sets firm deadlines for the FCC to respond to complaints regarding obscene, indecent, or profane material. It gives the FCC 270 days (approximately 9 months) to respond to any complaint received. The FCC would be required to act by issuing the notices to the licensee or permittee required by section 503, or by writing to the licensee or permittee and the complainant to inform

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[47] Black's Law Dictionary 1434 (5th ed., 1979) (defining "willful" as "intentional").

[48] *United States* v. *NAB,* 536 F. Supp. 149 (D.D.C. 1982).

[49] *Writers Guild of America, West, Inc.* v. *FCC*, 423 F. Supp. 1064 (D. Ca. 1976); *vacated and remanded to the FCC*, 609 F.2d 355 (9th Cir. 1979) (holding that [t]his is a considerably more narrow and precise issue than is the district court's bedrock principle and with respect to which the FCC's expertise and procedures could provide enormous assistance to the judiciary").

the parties that the Commission has not found a violation of 18 U.S.C. 1464. If the Commission commences an action against a licensee as a result of a complaint, this section would require it to complete the action within an additional 270 days. Thus, this section will require all action related to a particular indecency violation to be completed within 18 months of the violation.

Section 107. Required Contents of Annual Reports to the Commission.

This section would require the FCC to submit an annual report to Congress detailing the agency's enforcement activities. The section includes the details that must be included in the report.

Section 108. Media Ownership and Indecency Broadcast.

This section would require the GAO to conduct a study to examine whether a relationship exists between the increased consolidation of owners of media companies and the increased rise in indecency complaints to the FCC. The study would be submitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce within one year after the enactment of this legislation.

Additionally, this section would suspend the FCC's media ownership rules adopted on June 2, 2003, from taking effect by declaring such rules "invalid and without legal effect" until the completion and submission of the report.[50] During this time, the FCC's media ownership rules in place prior to June 2, 2003, would be in effect.[51]

Section 109. Implementation.

This section requires the FCC to implement the sections of this legislation within 180 days after the date of enactment. Additionally, this section would ensure that broadcasts aired prior to the date of enactment would not be subject to this legislation's increase fines and other provisions. Lastly, this section contains a separability clause that holds that if any provision of this bill or any provision of an amendment made to this bill, or the application thereof to particular persons or circumstances, is found to be unconstitutional, the remainder of this bill, or that amendment, or the application thereof to other persons or circumstances shall not be affected.

TITLE II—CHILDREN'S PROTECTION FROM VIOLENT PROGRAMMING

Sec. 201. Short Title.

This section establishes the short title of this title of the bill, "Children's Protection from Violent Programming".

Sec. 202. Findings.

This section expresses the findings made by the Committee in support of the legislation.

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[50] 2002 Biennial Regulatory Review "Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996", Report and Order, 18 FCC Rcd 13620 (rel. Jul. 2, 2003).

[51] *See* 47 CFR 73.3555; *See also* Section 202 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

Sec. 203. Assessment of Effectiveness of Current Ratings System for Violence and Effectiveness of V-Chip in Blocking Violent Programming.

This section directs the Commission to assess the effectiveness of measures to require television broadcasters and multichannel video programming distributors to rate and encode programming that could be blocked by parents using the V-Chip undertaken under section 715 of the Communications Act of 1934, and subsections (w) and (x) of section 303 of that Act. It also requires the FCC to report its findings to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce within 12 months of enactment, and annually thereafter.

If the FCC finds as a result of its ongoing assessment responsibilities described above, that the measures referred to are ineffective, then the Commission shall complete a rulemaking within 270 days after the date on which the Commission makes such a finding to prohibit the distribution of violent video programming during the hours when children are reasonably likely to comprise a substantial portion of the audience.

Sec. 204. Unlawful Distribution of Violent Video Programming that Is Not Specifically Rated for Violence and Therefore Is Not Blockable.

This section creates a new section 715 of the Act entitled: "Unlawful Distribution of Violent Video Programming not Specifically Blockable by Electronic Means", which makes it unlawful for any person to distribute to the public any violent video programming not blockable by electronic means specifically on the basis of its violent content during hours when children are reasonably likely to comprise a substantial portion of the audience. The FCC is directed to conduct a rulemaking and promulgate regulations to implement the provisions of this section within nine months of enactment. In that proceeding, the Commission may exempt programming that does not conflict with the objective of protecting children from the negative influences of violent video programming, as that objective is reflected in the findings of section 551(a) of the 1996 Act. Such exempt programming could include news programs and sporting events.

Additionally, the FCC is directed to exempt premium and pay-per-view cable and direct-to-home satellite programming and to define the term "hours when children are reasonably likely to comprise a substantial portion of the audience" and the term "violent video programming".

The Commission is directed to impose a forfeiture penalty of not more than the limits established under section 503(b) for indecency violations to any person who violates this section or related regulation. Each day on which such violation occurs is a separate violation. If a person repeatedly violates this section or related regulation, the FCC shall after notice and opportunity for hearing, revoke any license issued under this legislation. Moreover, the Commission must consider compliance with this section and related regulations when it reviews an application for renewal of a broadcast license.

Sec. 205. Federal Trade Commission Study of Marketing Strategy Improvements.

This section requires the FTC to study the marketing of violent content by the motion picture, music recording, and computer and video game industries to children, including the marketing practices improvements developed and implemented by those industries. The FTC is required to report annually on its findings and recommendations, to the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Energy and Commerce.

Sec. 206. Separability.

Under this section, if any provision of this bill or any provision of an amendment made by this Act, or the application thereof to particular persons or circumstances, is found to be unconstitutional, the remainder of this bill, or that amendment, or the application thereof to other persons or circumstances shall not be affected.

Sec. 207. Effective Date.

The prohibition contained in section 715 of the Communications Act of 1934 (as added by section 2 of this Act) and the regulations promulgated thereunder shall take effect 1 year after the regulations are adopted by the Commission.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 2056:

Senator Stevens offered an amendment to require the FCC to initiate mandatory license revocation proceedings against a licensee who has broadcast obscene, indecent, or profane language or images on three or more occasions. By a rollcall vote of 11 yeas and 10 nays as follows, the amendment was adopted:

YEAS—11	NAYS—10
Mr. Stevens	Ms. Snowe
Mr. Burns	Mr. Brownback
Mr. Lott[1]	Mr. Fitzgerald
Mrs. Hutchison	Mr. Ensign
Mr. Smith	Mr. Allen
Mr. Sununu	Mr. Dorgan
Mr. Hollings	Mr. Wyden
Mr. Inouye	Mrs. Boxer
Mr. Breaux	Ms. Cantwell
Mr. Nelson	Mr. McCain
Mr. Lautenberg[1]	

[1]By proxy

Senator Breaux offered an amendment to apply the penalties for obscene, etc., broadcasting to multichannel video programming distributors (other than with respect to pay-per-view, etc., program-

ming) until the FCC determines that 85 percent of the households with children are using the V-chip or similar technology to block offensive programming or have affirmatively opted out of using it. By rollcall vote of 11 yeas and 12 nays as follows, the amendment was defeated:

YEAS—11	NAYS—12
Mr. Lott	Mr. Stevens
Mr. Ensign	Mr. Burns
Mr. Hollings	Mrs. Hutchison
Mr. Rockefeller[1]	Ms. Snowe[1]
Mr. Kerry[1]	Mr. Brownback
Mr. Breaux	Mr. Smith
Mr. Dorgan	Mr. Fitzgerald
Mr. Wyden	Mr. Allen
Mrs. Boxer	Mr. Sununu
Mr. Nelson	Mr. Inouye
Mr. McCain	Ms. Cantwell
	Mr. Lautenberg[1]

[1]By proxy

Senator Dorgan, for himself, Senator Lott, Senator Snowe, and Senator Cantwell offered an amendment to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane language. By a rollcall vote of 13 yeas and 10 nays as follows, the amendment was adopted:

YEAS—13	NAYS—10
Mr. Lott	Mr. Stevens
Mrs. Hutchison[1]	Mr. Burns
Ms. Snowe[1]	Mr. Brownback
Mr. Hollings	Mr. Smith
Mr. Inouye	Mr. Fitzgerald
Mr. Rockefeller[1]	Mr. Ensign
Mr. Kerry[1]	Mr. Allen
Mr. Dorgan	Mr. Sununu[1]
Mr. Wyden	Mr. Breaux
Mrs. Boxer	Mr. McCain
Mr. Nelson	
Ms. Cantwell	
Mr. Lautenberg[1]	

[1]By proxy

By a rollcall vote of 23 yeas and 0 nays as follows, the bill was ordered reported with amendments:

YEAS—23	NAYS—0
Mr. Stevens	
Mr. Burns	
Mr. Lott	
Mrs. Hutchison[1]	
Ms. Snowe[1]	
Mr. Brownback	
Mr. Smith	
Mr. Fitzgerald	

Mr. Ensign
Mr. Allen
Mr. Sununu[1]
Mr. Hollings
Mr. Inouye
Mr. Rockefeller[1]
Mr. Kerry[1]
Mr. Breaux
Mr. Dorgan
Mr. Wyden
Mrs. Boxer
Mr. Nelson
Ms. Cantwell[1]
Mr. Lautenberg[1]
Mr. McCain

[1]By proxy

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

Title III—Provisions Relating to Radio

PART I—GENERAL PROVISIONS

SEC. 312. [47 U.S.C. 312] ADMINISTRATIVE SANCTIONS.

(a) The Commission may revoke any station license or construction permit—

(1) for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308;

(2) because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application;

(3) for willful or repeated failure to operate substantially as set forth in the license;

(4) for willful or repeated violation of, or willful or repeated failure to observe any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States;

(5) for violation of or failure to observe any final cease and desist order issued by the Commission under this section;

(6) for violation of section 1304, 1343, or 1464 of title 18 of the United States Code; or

(7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station, other than a non-commercial

educational broadcast station, by a legally qualified candidate for Federal elective office on behalf of his candidacy.

(b) Where any person (1) has failed to operate substantially as set forth in a license, (2) has violated or failed to observe any of the provisions of this Act, or section 1304, 1343, or 1464 of title 18 of the United States Code, or (3) has violated or failed to observe any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States, the Commission may order such person to cease and desist from such action.

(c) Before revoking a license or permit pursuant to subsection (a), or issuing a cease and desist order pursuant to subsection (b), the Commission shall serve upon the licensee, permittee, or person involved an order to show cause why an order of revocation or a cease and desist order should not be issued. Any such order to show cause shall contain a statement of the matters with respect to which the Commission is inquiring and shall call upon said licensee, permittee, or person to appear before the Commission at a time and place stated in the order, but in no event less than thirty days after the receipt of such order, and give evidence upon the matter specified therein; except that where safety of life or property is involved, the Commission may provide in the order for a shorter period. If after hearing, or a waiver thereof, the Commission determines that an order of revocation or a cease and desist order should issue, it shall issue such order, which shall include a statement of the findings of the Commission and the grounds and reasons therefor and specify the effective date of the order, and shall cause the same to be served on said licensee, permittee, or person.

(d) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission.

(e) The provisions of section 9(b) [5 U.S.C. 558(c)(1) and (2)] of the Administrative Procedure Act which apply with respect to the institution of any proceeding for the revocation of a license or permit shall apply also with respect to the institution, under this section, of any proceeding for the issuance of a cease and desist order.

(f) For purposes of this section:

(1) The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

(2) The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

(g) If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

(h) LICENSE REVOCATION FOR MULTIPLE VIOLATIONS OF INDECENCY PROHIBITIONS.—If, in each of 3 or more proceedings during

the term of a broadcast license for a broadcast station, a licensee is ordered to pay forfeitures for the broadcast of obscene, indecent, or profane material by either—

(1) the Commission and such forfeitures have been paid, or

(2) a court of competent jurisdiction and such orders have become final,

then the Commission shall commence a proceeding under subsection (a) with respect to that broadcast station to revoke the station license or construction permit of that licensee or permittee.

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Title V—Penal Provisions—Forfeitures

SEC. 503. [47 U.S.C. 503] FORFEITURES IN CASES OF REBATES AND OFFSETS.

(a) Any person who shall deliver messages for interstate or foreign transmission to any carrier, or for whom as sender or receiver, any such carrier shall transmit any interstate or foreign wire or radio communication, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transmission of such messages as fixed by the schedules of charges provided for in this Act, shall in addition to any other penalty provided by this Act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

(b)(1) Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have—

(A) willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument or authorization issued by the Commission;

(B) willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act or under any treaty, convention, or other agreement to which the United States is a party and which is binding upon the United States;

(C) violated any provision of section 317(c) or 508(a) of this Act; or

(D) violated any provision of section 1304, 1343, or 1464 of title 18, United States Code;

shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this subsection shall be in addition to any other penalty provided for by this Act; except that this subsection shall not apply to any conduct which is subject to forfeiture under title II, part II or III of title III, or section 506 of this Act.

(2)(A) If the violator is (i) a broadcast station licensee or permittee, (ii) a cable television operator, or (iii) an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument or authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed $25,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $250,000 for any single act or failure to act described in paragraph (1) of this subsection.

(B) If the violator is a common carrier subject to the provisions of this Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this subsection shall not exceed $100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act described in paragraph (1) of this subsection.

(C) Notwithstanding subparagraph (A), if the violator is—

(i)(I) a broadcast station licensee or permittee; or

(II) an applicant for any broadcast license, permit, certificate, or other instrument or authorization issued by the Commission; and

(ii) determined by the Commission under paragraph (1) to have broadcast obscene, indecent, or profane language or images,

the amount of any forfeiture penalty determined under this subsection shall not exceed $275,000 for the first violation, $375,000 for the second violation, and $500,000 for the third and any subsequent violations, with each utterance constituting a separate violation, except that the amount assessed a licensee or permitee for any number of violations in a given 24-hour time period shall not exceed a total of $3,000,000. In determining the amount of any forfeiture penalty under this subparagraph, the Commission, in addition to the elements identified in subparagraph (E), shall take into account the violator's ability to pay, including such factors as the revenue and profits of the broadcast stations that aired the obscene, indecent, or profane language and the size of the markets in which these stations are located.

[(C)**]** *(D)* In any case not covered in **[**subparagraph (A) or (B),**]** *subparagraph (A), (B), or (C),* the amount of any forfeiture penalty determined under this subsection shall not exceed $10,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $75,000 for any single act or failure to act described in paragraph (1) of this subsection.

[(D)**]** *(E)* The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(F) In the case of a violation in which the violator is determined by the Commission under paragraph (1) to have uttered obscene, in-

decent, or profane material, the Commission shall take into account, in addition to the matters described in subparagraph (E), the following factors with respect to the degree of culpability of the violator:

(i) Whether the material uttered by the violator was live or recorded, scripted or unscripted.

(ii) Whether the violator had a reasonable opportunity to review recorded or scripted programming or had a reasonable basis to believe live or unscripted programming would contain obscene, indecent, or profane material.

(iii) If the violator originated live or unscripted programming, whether a time delay blocking mechanism was implemented for the programming.

(iv) The size of the viewing or listening audience of the programming.

(v) The size of the market.

(vi) Whether the violation occurred during a children's television program (as such term is used in the Children's Television Programming Policy referenced in section 73.4050(c) of the Commission's regulations (47 C.F.R. 73.4050(c)) or during a television program rated TVY, TVY7, TVY7FV, or TVG under the TV Parental Guidelines as such ratings were approved by the Commission in implementation of section 551 of the Telecommunications Act of 1996, Video Programming Ratings, Report and Order, CS Docket No. 97-55, 13 F.C.C. Rcd. 8232 (1998)), and, with respect to a radio broadcast station licensee, permittee, or applicant, whether the target audience was primarily comprised of, or should have reasonably been expected to be primarily comprised of, children.

(G) The Commission may double the amount of any forfeiture penalty (not to exceed $550,000 for the first violation, $750,000 for the second violation, and $1,000,000 for the third or any subsequent violation not to exceed up to $3,000,000 for all violations in a 24-hour time period notwithstanding section 503(b)(2)(C)) if the Commission determines additional factors are present which are aggravating in nature, including—

(i) whether the material uttered by the violator was recorded or scripted;

(ii) whether the violator had a reasonable opportunity to review recorded or scripted programming or had a reasonable basis to believe live or unscripted programming would contain obscene, indecent, or profane material;

(iii) whether the violator failed to block live or unscripted programming;

(iv) whether the size of the viewing or listening audience of the programming was substantially larger than usual, such as a national or international championship sporting event or awards program; and

(v) whether the violation occurred during a children's television program (as defined in subparagraph (F)(vi)).

(3)(A) At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection after notice and an opportunity for a hearing before the Commission or an administrative law judge thereof in accordance with section 554 of title 5, United States Code. Any person against whom a forfeiture

penalty is determined under this paragraph may obtain review thereof pursuant to section 402(a).

(B) If any person fails to pay an assessment of a forfeiture penalty determined under subparagraph (A) of this paragraph, after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Commission, the Commission shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the forfeiture penalty shall not be subject to review.

(4) Except as provided in paragraph (3) of this subsection, no forfeiture penalty shall be imposed under this subsection against any person unless and until—

(A) the Commission issues a notice of apparent liability, in writing, with respect to such person;

(B) such notice has been received by such person, or until the Commission has sent such notice to the last known address of such person, by registered or certified mail; and

(C) such person is granted an opportunity to show, in writing, within such reasonable period of time as the Commission prescribes by rule or regulation, why no such forfeiture penalty should be imposed.

Such a notice shall (i) identify each specific provision, term, and condition of any Act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, instrument, or authorization which such person apparently violated or with which such person apparently failed to comply; (ii) set forth the nature of the act or omission charged against such person and the facts upon which such charge is based; and (iii) state the date on which such conduct occurred. Any forfeiture penalty determined under this paragraph shall be recoverable pursuant to section 504(a) of this Act.

(5)*(A)* No forfeiture liability shall be determined under this subsection against any person, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the notice required by paragraph (3) of this subsection or the notice of apparent liability required by paragraph (4) of this subsection, such person—

[(A)**]** *(i)* is sent a citation of the violation charged;

[(B)**]** *(ii)* is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission which is nearest to such person's place of residence; and

[(C)**]** *(iii)* subsequently engages in conduct of the type described in such citation. **[**The provisions of this paragraph shall not apply, however, if the person involved is engaging in activities for which a license, permit, certificate, or other authorization is required, or is a cable television system operator, if the person involved is transmitting on frequencies assigned for use in a service in which individual station operation is authorized by rule pursuant to section 307(e), or in the case of violations of section 303(q), if the person involved is a non-

licensee tower owner who has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower.]

(B) The provisions of subparagraph (A) shall not apply—

(i) if the person involved is engaging in activities for which a license, permit, certificate, or other authorization is required or is a cable television system operator;

(ii) if the person involved is transmitting on frequencies assigned for use in a service in which individual station operation is authorized by rule pursuant to section 307(e);

(iii) in the case of violations of section 303(q), if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower; or

(iv) in the case of a determination that a person uttered obscene, indecent, or profane material that was broadcast by a broadcast station license or permittee, if the person is determined to have willfully or intentionally made the utterance and knew or should have known that the material would be broadcast, but, notwithstanding any other provision of this section, any person determined by the Commission to have engaged in such activity shall be subject to a forfeiture penalty not to exceed $500,000 for each violation.

(C) Whenever the requirements of this paragraph are satisfied with respect to a particular person, such person shall not be entitled to receive any additional citation of the violation charged, with respect to any conduct of the type described in the citation sent under this paragraph.

(6) No forfeiture penalty shall be determined or imposed against any person under this subsection if—

(A) such person holds a broadcast station license issued under title III of this Act and if the violation charged occurred—

(i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or

(ii) prior to the date of commencement of the current term of such license,

whichever is earlier; or

(B) such person does not hold a broadcast station license issued under title III of this Act and if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.

For purposes of this paragraph, "date of commencement of the current term of such license" means the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) pending decision on an application for renewal of the license.

(7) In the case of an allegation concerning the utterance of obscene, indecent, or profane material that is broadcast by a station licensee or permittee—

(A) within 270 days after the date of the receipt of such allegation, the Commission shall—

(i) issue the required notice under paragraph (3) to such licensee or permittee or the person making such utterance;

(ii) issue a notice of apparent liability to such licensee or permittee or person in accordance with paragraph (4); or

(iii) notify such licensee, permittee, or person in writing, and any person submitting such allegation in writing or by general publication, that the Commission has determined not to issue either such notice; and

(B) if the Commission issues such notice and such licensee, permittee, or person has not paid a penalty or entered into a settlement with the Commission, within 270 days after the date on which the notice was issued, the Commission shall—

(i) issue an order imposing a forfeiture penalty; or

(ii) notify such licensee, permittee, or person in writing, and any person submitting such allegation in writing or by general publication, that the Commission has determined not to issue either such order.

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Title VII—Miscellaneous Provisions

SEC. 715. UNLAWFUL DISTRIBUTION OF VIOLENT VIDEO PROGRAMMING NOT SPECIFICALLY BLOCKABLE BY ELECTRONIC MEANS.

(a) UNLAWFUL DISTRIBUTION.—It shall be unlawful for any person to distribute to the public any violent video programming not blockable by electronic means specifically on the basis of its violent content during hours when children are reasonably likely to comprise a substantial portion of the audience.

(b) RULEMAKING PROCEEDING.—The Commission shall conduct a rulemaking proceeding to implement the provisions of this section and shall promulgate final regulations pursuant to that proceeding not later than 9 months after the date of enactment of the Children's Protection from Violent Programming Act. As part of that proceeding, the Commission—

(1) may exempt from the prohibition under subsection (a) programming (including news programs and sporting events) whose distribution does not conflict with the objective of protecting children from the negative influences of violent video programming, as that objective is reflected in the findings in section 551(a) of the Telecommunications Act of 1996;

(2) shall exempt premium and pay-per-view cable programming and premium and pay-per-view direct-to-home satellite programming; and

(3) shall define the term "hours when children are reasonably likely to comprise a substantial portion of the audience" and the term "violent video programming".

(c) ENFORCEMENT.—

(1) FORFEITURE PENALTY.—The forfeiture penalties established by section 503(b) for violations of section 1464 of title 18, United States Code, shall apply to a violation of this section, or any regulation promulgated under it in the same manner as if a violation of this section, or such a regulation, were a violation of law subject to a forfeiture penalty under that section.

(2) LICENSE REVOCATION.—If a person repeatedly violates this section or any regulation promulgated under this section, the Commission shall, after notice and opportunity for hearing, revoke any license issued to that person under this Act.

(3) LICENSE RENEWALS.—The Commission shall consider, among the elements in its review of an application for renewal of a license under this Act, whether the licensee has complied with this section and the regulations promulgated under this section.

(d) DEFINITIONS.—For purposes of this section—

(1) BLOCKABLE BY ELECTRONIC MEANS.—The term "blockable by electronic means" means blockable by the feature described in section 303(x).

(2) DISTRIBUTE.—The term "distribute" means to send, transmit, retransmit, telecast, broadcast, or cablecast, including by wire, microwave, or satellite, but it does not include the transmission, retransmission, or receipt of any voice, data, graphics, or video telecommunications accessed through an interactive computer service as defined in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)), which is not originated or transmitted in the ordinary course of business by a television broadcast station or multichannel video programming distributor as defined in section 602(13) of that Act (47 U.S.C. 522(13)).

(3) VIOLENT VIDEO PROGRAMMING.—The term "violent video programming" as defined by the Commission may include matter that is excessive or gratuitous violence within the meaning of the 1992 Broadcast Standards for the Depiction of Violence in Television Programs, December 1992.

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